REMARKS

Claims 1-16 and 29-40 are currently pending in the subject application and are presently under consideration. Claims 1, 29, and 30 have been amended as shown on pp. 3-7 of this Reply. In addition, the specification has been amended as indicated on p. 2 of this Reply, as requested by the Examiner.

Applicants' representative thanks the Examiner for the courtesies extended during the telephonic interview on June 15, 2005, during which proposed amendments to the subject independent claims were discussed. No agreement was reached with regard to the claims during the interview.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I.   **Rejection of Claims 1-16 and 30-40 Under 35 U.S.C. §101**

Claims 1-16 and 30-40 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to a non-statutory subject matter. This rejection should be withdrawn for at least the following reasons. Claims 1 and 30 have been amended herein to further emphasize novel aspects of applicants' invention, and it is believed that such amendments suffice to overcome the Examiner's concerns regarding the subject claims. Accordingly, withdrawal of the rejection of independent claims 1 and 30 (and claims depending respectively there from) is respectfully requested.

II.   **Rejection of Claims 1-16 and 29-40 Under the Judicially-Created Doctrine of Obviousness-Type Double Patenting**

Claims 1-16 and 29-40 stand provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of application no. 09/818,448, filed March 27, 2001. Applicants' representative will submit a terminal disclaimer to traverse this rejection upon the Examiner's indication that the subject claims are in condition for allowance.

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III.   Rejection of Claims 1-16 and 29-40 Under 35 U.S.C. §103(a)

Claims 1-16 and 29-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee *et al.* (Pub. No.: US 2002/0161673). It is respectfully requested that this rejection be withdrawn for at least the following reasons. Lee *et al.* does not teach or suggest all aspects set forth in the subject claims.

> To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) *must teach or suggest all the claim limitations. See* MPEP §706.02(j). The *teaching or suggestion to make the claimed combination* and the reasonable expectation of success *must be found in the prior art and not based on the Applicant's disclosure. See In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). An examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done. *Ex parte Levengod,* 28 USPQ2d 1300 (P.T.O.B.A.&I. 1993).

The subject invention provides for a system for communicating over a protocol, including a *class factory that selects a protocol object creator that produces an object associated with a protocol for communicating over a network*. The class factory includes a plurality of identifiers; and *at least one registered protocol object creator associated with at least one of the plurality of identifiers, the at least one registered protocol object creator adapted to create at least one protocol object.* (See, e.g., amended independent claim 1.) Similarly, independent claim 29 recites, in part, a system having a class factory including a plurality of identifiers; and at least one registered protocol object creator, the at least one registered protocol object creator adapted to

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create at least one protocol object. Independent claim 30 sets forth *"an object generator that creates one or more protocol objects associated with one or more protocols*; and a protocol object selection component that selects a protocol object based at least in part on information associated with an identity of at least one resource with which the system is attempting to communicate and a protocol employed by the at least one resource." According to the specification, "The system includes a class factory operable to *select protocol object creators that produce objects* associated with the various protocols. Which protocol object creator to employ can be determined by identifiers associated with the resource to be accessed, the class factory and the protocols." (Page 3, lines 10-13.)

The Examiner asserts that Lee *et al.* teaches at least one registered protocol object creator that creates at least one protocol object, citing reference numerals 210, 220, and 240, Figure 2, and paragraphs 0037-0043. Contrary to the Examiner's assertions, reference numeral 210 refers to a requester field, numeral 220 refers to a metadata field, and numeral 240 refers to a hyperlink field. Nowhere in the Examiner's cited sections or otherwise does Lee *et al.* even mention a component that *generates* an object, let alone an object associated with a protocol, (*e.g.*, HTTP, FTP, ...). Rather, Lee *et al.* discusses a plurality of data fields that can be populated with information, but it silent with regard to any mention of object generation.

Moreover, applicants' representative respectfully disagrees with the Examiner's assertion that "Lee's record 250 is in fact some sort of class factory..." The record 250 discussed in Lee *et al.* is just that: a record with data fields in which information is stored. Nothing in Lee *et al.* suggests that the record 250 is a class factory, let alone a class factory with a protocol object creator that generates objects that facilitate communication *via* a specific protocol. The Examiner further asserts that it is well known that a class is a descriptive tool used to define a set of attributes that characterize any member of the class, and that therefore, the record 250 of Lee *et al.* is a class factory because the record 205 defines a set of attributes (*e.g.*, a requester field, a metadata field, and a hyperlink field list), which is defined by a plurality of identifiers and associated objects. However, the fact that the record 250 of Lee *et al.* stores information related to attributes does not teach or suggest that the record 250 is remotely capable of performing a selective act,

such as selecting an object protocol creator. Similarly, Lee *et al.* fails to teach or suggest the claimed aspect of a component that generates an object.

In view of at least the foregoing, it is readily apparent that Lee et al. fails to make obvious applicants' claimed invention as set forth in independent claims 1, 29, and 30 (and claims 2-16 and 31-40, which depend respectively there from). Accordingly, this rejection should be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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